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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States Parties due in 1992

Addendum

CYPRUS

[23 June 1993]

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I. GENERAL INFORMATION

1. The Republic of Cyprus in 1990 approved the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by enacting Law No. 235 of 1990.

2. The instrument of ratification was deposited with the Secretary-General on 18 July 1991 and in accordance with article 27 (2), the Convention entered into force for Cyprus on 17 August 1991.

3. On 10 December 1992 the Government of the Republic of Cyprus made a declaration under articles 21 and 22 of the Convention recognizing the competence of the Committee established under article 17 of the Convention:

(a) To receive and consider communication to the effect that a State party claims that another State party is not fulfilling its obligations under the Convention (art. 21), and

(b) To receive and consider communication from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State party of the provision of the Convention (art. 22).

A. Constitution

4. The Republic of Cyprus has a written Constitution which is the supreme law of the Republic and no act or decision of any organization or person in the Republic exercising executive, administrative or judicial power shall in any way be contrary to or inconsistent with any of the provisions of the Constitution. The Constitution not only defines the fundamental rights and liberties in clear language, but also provides effective remedies for their enforcement.

5. Under Article 35, the legislative, executive and judicial authorities of the Republic shall be bound to secure within the limits of their respective competence the efficient application of the provisions relating to fundamental rights and liberties. A law which in any way violates any of the constitutional provisions may be declared by the Supreme Court to be unconstitutional.

6. Article 7 safeguards the right to life and corporal integrity. It reads:

"1. Every person has the right to life and corporal integrity.

2. No person shall be deprived of his life except in the execution of a sentence of a competent court following his conviction for an offence for which this penalty is provided by law. A law may provide for such penalty only in cases of premeditated murder, high treason, piracy jure gentium and capital offences under military law.

3. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) In defence of person or property against the infliction of a proportionate and otherwise unavoidable and irreparable evil;

(b) In order to effect an arrest or to prevent the escape of a person lawfully detained;

(c) In action taken for the purpose of quelling a riot or insurrection when and as provided by law."

7. Article 8 provides that "no person shall be subjected to torture or to inhuman or degrading punishment or treatment". This Article is identical to article 3 of the European Convention for the Protection of Human Rights which the Republic of Cyprus ratified by enacting Law No. 39 of 1962 (see para. 15 below).

8. Article 10 prohibits slavery or servitude and also provides that no person shall be required to perform forced or compulsory labour, which does not include:

(a) Any work required to be done in the ordinary course of detention imposed according to the provisions of Article 11 or during conditional release from such detention;

(b) Any service of a military character if imposed or, in the case of conscientious objectors, subject to their recognition by a law, service exacted instead of compulsory military service;

(c) Any service exacted in case of an emergency or calamity threatening the life or well-being of the inhabitants.

9. Article 11 guarantees the right to liberty and security of person. it reads:

"1. Every person has the right to liberty and security of person.

2. No person shall be deprived of his liberty save in the following cases when and as provided by law:

(a) The detention of a person after conviction by a competent court;

(b) The arrest or detention of a person for non-compliance with the lawful order of a court;

(c) The arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) The detention of a minor by a lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) The detention of persons for the prevention of spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) The arrest or detention of a person to prevent him effecting an unauthorized entry into the territory of the Republic or of an alien against whom action is being taken with a view to deportation or extradition.

3. Save when and as provided by law in case of a flagrant offence punishable with death or imprisonment, no person shall be arrested save under the authority of a reasoned judicial warrant issued according to the formalities prescribed by the law.

4. Every person arrested shall be informed at the time of his arrest in a language which he understands of the reasons for his arrest and shall be allowed to have the services of a lawyer of his own choosing.

5. The person arrested shall, as soon as is practicable after his arrest, and in any event not later than 24 hours after the arrest, be brought before a judge, if not earlier released.

6. The judge before whom the person arrested is brought shall promptly proceed to inquire into the grounds of the arrest in a language understandable by the person arrested and shall, as soon as possible and in any event not later than three days from such appearance, either release the person arrested on such terms as he may deem fit or, where the investigation into the commission of the offence for which he has been arrested has not been completed, remand him in custody and may remand him in custody from time to time for a period not exceeding eight days at any one time:

Provided that the total period of such remand in custody shall not exceed three months from the date of the arrest on the expiration of which every person or authority having the custody of the person arrested shall forthwith set him free.

Any decision of the judge under this paragraph shall be subject to appeal.

7. Every person who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

8. Every person who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

10. Article 12.3 provides that no law shall provide for a punishment which is disproportionate to the gravity of the offence.

B. International conventions and treaties

11. International conventions and treaties when ratified by a law and published in the Official Gazette are binding on the Republic and they have precedence over the national legislation. Article 169 reads:

"Subject to the provisions of article 50 and paragraph 3 of article 57:

(1) Every international agreement with a foreign State or any international organization relating to commercial matters, economic cooperation (including payments and credit) and modus vivendi shall be concluded under a decision of the Council of Ministers;

(2) Any other treaty, convention or international agreement shall be negotiated and signed under a decision of the Council of Ministers and shall only be operative and binding on the Republic when approved by a law made by the House of Representatives whereupon it shall be concluded;

(3) Treaties, conventions and agreements concluded in accordance with the foregoing provisions of this article shall have, as from their publication in the Official Gazette of the Republic, superior force to any municipal law on condition that such treaties, conventions and agreements are applied by the other party thereto".

12. Some of the provisions of such conventions when ratified are by their very nature self-executing, while others can only become operative if they are given effect by local legislative, executive or administrative action.

13. In the case of Malachtou v. Armeftis (Civil Appeal No. 6616 dated 20 January 1987) the Supreme Court of Cyprus held that self-executing provisions in a convention are applicable and enforceable without the need for passing any legislation and no other action is required to be taken; if such provisions are contrary to or inconsistent with other provisions contaned in the domestic legislation, such self-executing provisions have precedence over the local provisions. The following passages from the decision are important:

"In the Republic of Cyprus a convention negotiated or signed under a decision of the Council of Ministers and ratified by a law made by the House of Representatives and published in the Official Gazette of the Republic acquires superior force to any municipal law.

"... the convention has superior force not in the sense of repealing the inconsistent domestic law but in the sense of having superiority and precedence in its application. We agree with counsel for the appellant that for a treaty to be applicable it must be self-executing.

"We need not in this case attempt to give a general definition of the term 'self-executing treaty'. Pious declarations and provisions relating to political and international relations in a convention are not self-executing provisions. Only such provisions of a convention are self-executing which may be applied by the organs of the State and which

can be enforced by the courts and which create rights for the individuals; they govern or affect directly relations of the internal life between the individuals, and the individuals and the State or the public authorities. Provisions which do not create by themselves rights or obligations of persons or interests and which cannot be justiciable or do not refer to acts or omissions of State organs are not self-executing.

"Those treaties which do not require any legislation to make them operative are sometimes referred to as 'self-executing'. It seems that Congress has been so prompt to pass legislation for the implementation of treaties that there have been very few opportunities of judicial determination of the question which treaties actually require legislation, and which do not, and it does not follow that, because legislation was passed to implement a treaty, the legislation was essential."

14. Some of the provisions of this Convention can be implemented directly as self-executing. Others have to be transformed into domestic legislation or administrative regulations. Indicatively, the provisions which can be directly implemented as self-executing are articles 3, 6, 7 and 8. Provisions under articles 12 and 13 need domestic action. Other provisions are already covered by the existing legislation.

C. Other conventions ratified

15. The Republic of Cyprus has ratified a number of international and European conventions for the protection of human rights, including the following:

(a) European Convention for the Protection of Human Rights and Fundamental Freedoms by enacting Law No. 39 of 1962;

(b) International Covenant on Civil and Political Rights by enacting Law No. 14 of 1969;

(c) International Convention on the Elimination of all Forms of Racial Discrimination by enacting Law No. 12 of 1967, amended by Law No. 11 (III) of 1992;

(d) Optional Protocol to the International Covenant on Civil and Political Rights by enacting Law No. 17 (III) of 1992.

16. By the adoption of the Optional Protocol referred to above, the right is given to individuals who claim that any of their rights enumerated in the Covenant have been violated to submit a written communication to the Human Rights Committee for consideration.

17. The Republic of Cyprus in 1989 made a declaration recognizing the competence of the European Commission on Human Rights to deal with individual recourses under article 25 of the European Convention on Human Rights.

18. Before the ratification of the Convention against Torture, torture in its other guises as assault, causing grievous bodily harm and wounding, were part

of the criminal law and, in addition, if such practices were used with a view to obtaining a confession, they vitiated the admissibility of a confession on the grounds of involuntariness. If a confession was obtained under oppressive circumstances, such confession would be rendered inadmissible in a court of law (see para. 103 below).

D. Competent authority

19. The authorities involved in the implementation of the Convention and its principles are the judicial authorities, the office of the Attorney-General, the police and other administrative departments.

20. In 1991 a Commissioner for Administration (Ombudsman) was appointed under the provisions of the Commissioner for Administration Law, 1991 (Law No. 3 of 1991). According to the provisions of section 5 of this Law the Commissioner may investigate complaints involving allegations of illegality, violation of human rights and contraventions of the principles of proper administration and good government, including breaches of natural justice and improper exercise of discretionary powers.

E. Courts and punishment

21. According to the Court of Justice Law of 1960 (Law No. 14 of 1960 as amended) the criminal jurisdiction is exercised by the courts set up under the said law. Offences are tried without jury by one judge if the maximum penalty provided by the law for the offence committed does not exceed three years imprisonment, or by an assize court composed of three judges if the offence is punishable with more than three years imprisonment.

22. Under article 12 of the Constitution every person charged with an offence shall be presumed innocent until proved guilty.

23. The punishments which the courts exercising criminal jurisdiction can impose are:

(i) Death;

(ii) Imprisonment;

(iii) A fine;

(iv) Compensation;

(v) Finding security to keep the peace and be of good behaviour or to come up for judgement;

(vi) Probation orders;

(vii) Supervision.

24. The death penalty for premeditated murder was abolished and mandatory life imprisonment substituted (Law No. 86 of 1983).

F. Attorney General

25. The Attorney-General is one of the Independent Officers of the Republic, the others being the Auditor General and the Governor of the Issuing Bank of the Republic. All prosecutions are under the control of the Attorney-General who enjoys a number of prerogatives, including the right to enter a nolle prosequi.

26. The following passage from the Constitution is relevant:

> "Article 113.2. The Attorney-General of the Republic shall have power, exercisable at his discretion in the public interest, to institute, conduct, take over and continue or discontinue any proceedings for an offence against any person in the Republic. Such power may be exercised by him in person or by officers subordinate to him acting under and in accordance with his instructions."

27. The police is the authority responsible for the investigation of offences including the arrest and detention of suspects.

28. In exceptional cases the Council of Ministers may appoint a special investigator by name or by reference to his office to investigate into the commission of an offence. Such investigator conducts the same work as a police investigator and this provision of the law is invoked when the impartiality of the police is in doubt (see paras. 93-94 below).

29. If there is a complaint of ill-treatment against a police officer, special complaints committees are set up by decision of the Ministry of Justice and Public Order (see paras. 90-92 below).

30. The arrest and detention of a person is governed by law and is within the framework of the constitutional constraints.

31. Under the Constitution and the Criminal Procedure Law (cap. 155) the arrest of a person is effected under a court order unless the offence is a flagrant one. The detention of a person under a warrant of arrest is only for 24 hours and if further detention is required, the matter must be brought before the court for the issue of a remand order, which should not be for more than eight days. The remand order may be renewed for further periods of not more than eight days each, but the aggregate of such periods should in no case exceed three months (see paras. 9 and 66-67).

G. Remedies

32. The remedies available to a victim of alleged torture are an action for damages, including exemplary damages or the institution of criminal proceedings against the alleged perpetrator. Such proceedings can be instituted by or at the instigation of the Attorney-General or by the victim himself.

33. A victim of torture is entitled to the services offered by the Government through its welfare and medical services.

34. A victim of torture may invoke in a proper case article 22 of the Convention for examination of his complaint by the Committee set up under article 17 of the Convention, the competence of which the Republic of Cyprus recognized in December 1992 (see para 3).

35. Torture is also prohibited under the International Covenant on Civil and Political Rights. Under the Optional Protocol thereto, a victim of torture may submit a complaint to this Committee (see para. 16, above). (See, however, the remark made in paras. 52 and 65 below).

36. The Republic of Cyprus also ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment by enacting Law No. 24 of 1989, thus making possible the inspection by the European Committee for the Prevention of Torture of any place where persons deprived of their liberty by a public authority are detained, and the examination of their treatment.

37. As a result of the occupation of approximately 37 per cent of the territory of the Republic of Cyprus by the armed forces of Turkey, the Government of the Republic is prevented from exercising its authority over and assuring respect for human rights in the occupied area. Therefore the information given in this report concerns only persons under the effective jurisdiction of the Republic of Cyprus (see core document, p. 9, last paragraph).

II. INFORMATION CONCERNING ARTICLES 2 TO 16 OF THE CONVENTION

Article 2. Prohibition of torture

38. Torture and any form of cruel or degrading treatment or punishment are abhorrent acts and were always in one form or another offences under the laws of Cyprus. Torture is prohibited under Article 8 of the Constitution which provides that "no person shall be subjected to torture or to inhuman or degrading punishment or treatment". This Article of the Cyprus Constitution is identical to article 3 of the European Convention for the Protection of Human Rights which Cyprus has ratified by enacting Law No. 39 of 1962 (see para. 16 above).

39. Under the Cyprus Criminal Code (cap. 154, as amended), the following acts are offences and may amount to torture:

Section 228. Acts intended to cause grievous harm or prevent arrest:

"Any person who, with intent to maim, disfigure or disable any person or to do some grievous harm to any person, or to resist or prevent the lawful arrest or detention of any person -

(a) Unlawfully wounds or does any grievous harm to any person by any means whatever; or

(b) Unlawfully attempts in any manner to strike any person with any kind of projectile or with a knife, or other dangerous or offensive weapon; or

(c) Unlawfully causes any explosive substance to explode; or

(d) Sends or delivers any explosive substance or othe dangerous or noxious thing to a.y person; or

(e) Causes any such substance or thing to be taken o received by any person; or

(f) Puts any corrosive fluid or any destructive or explosive substance in any place; or

(g) Unlawfully casts or throws any such fluid or substance at or upon any person, or otherwise applies any such fluid or substance to the person of any person,

is guilty of a felony and is liable to imprisonment for life."

Section 231. Grievous harm:

"Any person who unlawfully does grievous harm to another is guilty of a felony, and is liable to imprisonment for seven years, or to fine or to both."

Section 233. Maliciously administering poison with intent to harm:

"Any person who unlawfully, and with intent to injure or annoy another, causes any poison or noxious thing to be administered to, or taken by, any person, and thereby endangers his life, or does him some grievous harm, is guilty of a felony, and is liable to imprisonment for fourteen years."

Section 234. Wounding and similar acts:

"Any person who -

(a) Unlawfully wounds another; or

(b) Unlawfully, and with intent to injure or annoy an person, causes any poison or other noxious thing to be administered to, or taken by, any person, is guilty of a felony and is liable to imprisonment for three years."

Section 243. Bodily harm:

"Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable to imprisonment for three years."

40. The Republic of Cyprus has ratified the Convention against Torture and other Cruel or Inhuman Treatment or Punishment by enacting Law No. 235 of 1990, making thus the Convention part of its municipal legislation. In the said Law the offence of torture, as defined in article 1 of the Convention, is

made a specific offence carrying sentences of varying severity according to the gravity of the offence and the circumstances of its commission.

41. In particular, section 3 of Law No. 235 of 1990 provides:

"(1) Any person subjecting another person to torture is guilty of an offence and is liable:

(a) To imprisonment for three years;

(b) To imprisonment for ten years if he causes serious bodily injury to the tortured person or uses means or methods of systematic torture;

"(2) If the person responsible for torture is a public officer or person acting under his official capacity he is liable:

(a) To imprisonment for five years;

(b) To imprisonment for fourteen years if the aggravating circumstances referred to in paragraph (b) of subsection (1) above exist.

"(3) If in consequence of torture the tortured person dies the person responsible for the torture is liable to imprisonment for life.

"(4) For the purposes of this section the word 'torture' has the meaning assigned to it in Article 1 of the Convention."

42. In 1969 the Republic of Cyprus ratified the international Covenant on Civil and Political Rights by enacting Law No. 14 of 1969, in consequence of which the Covenant became part of the municipal law of Cyprus with superior force to local enactments (art. 169 (3) of the Constitution). Article 7 of the Covenant also prohibits torture.

43. The Republic has also ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (see para. 36 above).

44. Persons sentenced to imprisonment and other persons deprived temporarily of their liberty awaiting trial are detained in prisons which are run under strict rules and regulations.

45. Under the Prisons (General) Regulations of 1981, corporal punishment or confinement in a dark cell and every cruel, inhuman or degrading punishment, as disciplinary measures against prisoners are prohibited (Reg. 88).

46. Under the same regulations the Prisons' Council was constituted, with power and authority, inter alia to hear and investigate any complaint made by a prisoner, to inspect the condition of the prison building and to inquire into the working conditions of prisoners.

47. Under Regulation 80 of the same Regulations the isolation of a prisoner is permissible provided that, if such isolation is likely to have adverse effects on the prisoner, it can only be resorted to if a medical officer certifies that the prisoner can sustain such treatment.

48. It must be mentioned that the Prisons Law and Regulations are at present at an advanced stage of revision with a view to their being modernized and brought into conformity with the legislation of other European countries.

The main characteristic of the new law and regulations is the improvement of the existing system. In particular:

(a) Prisoners are enabled to attend weddings, funerals and other family events, either under guard or with a special permit of absence. This improves the existing provisions;

(b) There are provisions enabling prisoners to have contacts for securing employment after their release;

(c) Also there is provision for the arrangement of private meetings of prisoners with their spouses (new provision).

49. Apart from persons detained awaiting trial and persons convicted and sentenced to imprisonment, there is another class of persons whose detention is sanctioned by an order of the court. They are persons suffering from mental disturbance.

50. Under the mental Patients Law (cap. 252), persons can only be detained in a mental hospital if they are fit subjects for confinement so found by an inquiry carried out by a court of law. Under section 30, mistreatment or neglect of mental patients by any superintendent, officer, nurse, attendant, servant or other person employed in any mental hospital, is an offence. Section 33 makes it an offence for any person who has accepted the charge of a mental patient to neglect in any way such a patient. The said sections read as follows:

> "Section 30. Any superintendent, officer, nurse, attendant, servant or other person employed in any mental hospital, criminal mental hospital, or the owner of or any person employed in any place in which a mental patient is confined by reason of a licence issued under section 21 of this Law, who strikes, ill-treats or wilfully neglects any mental patient or criminal mental patient confined in such mental hospital, criminal mental hospital or place of confinement shall be guilty of an offence and shall on summary conviction be liable to imprisonment for a term not exceeding six months or to a fine not exceeding 125 pounds or to both such imprisonment and fine.
>
> "Section 33. Any person who accepts the charge of a mental patient or a criminal mental patient allowed to be absent on parole, and who -
>
> (a) Wilfully neglects to provide such patient with suitable lodging, clothing, food, medical attendance when required, or other necessaries, or fails to take proper care of such patient; or

(b) Refuses to allow such patient to be visited by any medical officer of the mental hospital or criminal mental hospital from which he was liberated on parole or by a District Medical Officer,

shall be guilty of an offence and shall on summary conviction be liable to imprisonment for a term not exceeding six months or to a fine not exceeding 125 pounds or to both such imprisonment and fine."

This Law is currently undergoing drastic revision and compulsory confinement will be restricted to certain cases where the patient may be dangerous to himself or to others and the confinement shall not be for an indefinite period but for a fixed period, subject to renewal if there is no change in the patient's condition justifying his release.

51. Paragraphs 2 and 3 of the Convention are self-executing provisions and need no local action for their respect and implementation (see para. 13 above).

52. It should be noted that Cyprus has never proclaimed a state of emergency since independence, not even when the country was invaded by Turkey in 1974 and part of it was and continues to be occupied. Despite the devastating effects those events had on normal life in general (thousands of people lost their lives and 40 per cent of the Greek Cypriot population was displaced) and the upheaval they caused to the administration of the country in particular, the provisions of Article 183 of the Constitution were not invoked. (See core document, p. 16).

53. The order of a superior officer under the existing law is not a defence if it directs another to the commission of an offence. Under the Criminal Code (cap. 154) the defence of compulsion is very restrictive. Section 16 reads:

"Except premeditated murder and offences against the State punishable with death, no act is an offence which is done by a person who is compelled to do it by threats which at the time of doing it reasonably cause the apprehension that instant death to that person will otherwise be the consequence; provided that the person doing the act did not, of his own accord or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint."

Also, under the Public Service Law 1990 (Law No. 1 of 1990) a civil servant has a duty to comply with the direction of his superiors, except that in cases where the specific direction is ostensibly illegal the civil servant has a duty not to comply with such direction. He must only comply with such direction if the superior officer insists on the basis of the opinion of the Attorney General.

Article 3. No extradition to a State where torture is likely to take place

54. The Republic of Cyprus ratified the European Convention on Extradition in 1970 (Law No. 95 of 1970). Under the said Convention extraditable offences

are all offences punishable both in the requesting and the requested State with imprisonment of 12 months or more. However, if the extradition is not sought by a member State, the provisions of the Extradition of Fugitives Law, 1970 apply (Law 97 of 1970). Under that Law extradition is effected between:

(a) Prescribed Commonwealth countries for offences set out in a schedule to the Law;

(b) Countries with which the Republic has signed a bilateral treaty for this purpose and for offences specified in the treaty.

The schedule in which the extraditable offences for extradition to Commonwealth countries are set out does not make specific reference to torture, but it includes the following offences:

(a) Malicious or intentional wounding or causing grievous bodily harm;

(b) Unlawful assault causing actual bodily harm;

(c) Rape.

55. Article 3 of the Convention against torture shall be read as part of the municipal legislation and shall have precedence over any other provision. Therefore, the provisions of this article should be respected and implemented without need for domestic action.

56. Cyprus is not as yet facing a problem of refugees from other countries and cases of deportation of undesirable immigrants are dealt with and considered individually. Since the Convention became part of domestic law, authorities must, in dealing with cases of expulsion or return, bear in mind and respect article 3 of the Convention, which is a self-executing provision.

57. It must be mentioned that Cyprus has ratified the Fourth Protocol to the Convention for the Protection of Human Rights (by enacting law No. 52 of 1989). Under article 3:

(i) No one shall be expelled by means of an individual or of a collective measure from the territory of the State of which he is a national.

(ii) No one shall be deprived of the right to enter the territory of the State of which he is a national.

Under article 4 of the Cyprus Constitution no citizen can be banished or excluded from the Republic under any circumstances.

58. Finally, it may be added that under article 32 of the Constitution the Republic is not precluded by reason of the provisions regarding the fundamental rights and liberties from regulating any matter relating to aliens in accordance with international law. Deportation of aliens is only permissible under section 14 of the Aliens and Immigration Law (cap. 105), by which the Chief Immigration Officer can make a deportation order after the conduct of a proper inquiry into the case. Deportation orders are mostly made

on grounds of public interest, such as the protection of peace, good order, good government, public morals or public security. A deportation order can be the subject of a recourse to the Supreme Court under article 146 of the Constitution.

Article 4. Making torture an offence

59. The Republic of Cyprus has made torture an offence by enacting Law No. 235 of 1990 for the purpose of ratifying the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The offence of torture is punishable with terms of imprisonment varying from three years to life imprisonment. (see para. 40 above).

60. Under the provisions of the Criminal Code (cap. 154) the attempt to commit an offence and complicity in the commission of an offence are themselves offences. Section 366 of Cap. 154 defines attempt. Section 367 makes the attempt an offence. Section 368 provides for the punishment of attempt. Section 370 provides that a person who incites or attempts to induce another person to commit an offence is guilty of an offence. Sections 371 and 372 refer to conspiracies to commit an offence.

Article 5. Extension of jurisdiction

61. Under the Criminal Code (cap. 154, sect. 5) courts of the Republic of Cyprus exercising criminal jurisdiction have power to try any criminal offence, including the offence of torture, when the offence is committed within the territory of the Republic or aboard a Cyprus ship or aboard an aircraft registered in Cyprus.

62. Moreover, the courts of the Republic of Cyprus have jurisdiction to try any offence committed in a foreign country if the offender is a citizen of the Republic, the offence is punishable in the Republic with death or imprisonment exceeding two years and the act or omission also constitutes an offence punishable by the law of the country where it was committed.

63. If the victim is a national of the Republic of Cyprus and he was tortured in a State over which the Republic has no jurisdiction and the offender is not a citizen of the Republic, then it may not be considered appropriate in such circumstances to assume jurisdiction even if the offender is in Cyprus.

64. The Republic is considering taking the necessary measures so as to extend the jurisdiction over offences committed abroad, if the offender is present in Cyprus and cannot be extradited under article 8 of the Convention.

65. As stated in paragraph 37 of this report (see also core document, p. 9, last paragraph), as a result of the occupation of approximately 37 per cent of the territory of the Republic of Cyprus by the armed forces of Turkey, the Government of the Republic is prevented from exercising its authority and assuring respect for human rights, including the provisions of this Convention, in the occupied area. The Government of the Republic is also

prevented, by the fact of occupation, from exercising its authority in respect of fugitives or convicts who take refuge in the territory occupied by the Turkish armed forces.

Article 6. Arrest of a person

66. The provisions of article 6 are self-executing and the authorities are bound to implement them. A person who is not a national of Cyprus and is present in Cyprus is liable to arrest if he commits the offence of torture or any other offence for which the Cyprus courts have jurisdiction either to try him or to extradite him following the procedure prescribed in the relevant law (European Convention on Extradition (Ratification) Law 1970 (Law No. 95 of 1970) and Extradition of Fugitives Law, 1970 (Law No. 97 of 1970)).

67. In view of the nature of the provisions of article 6 of the Convention, there is no need for particular measures to be taken for its implementation, particularly paragraphs 3 and 4.

Article 7. Duty to extradite or prosecute and afford fair trial

68. In Cyprus all prosecutions come under the authority and control of the Attorney-General. Offences are invariably reported to the police and after an investigation is carried out, a decision is taken as to whether to prosecute or not. The seriousness of the offence is usually reflected in the punishment provided by the law and the procedure in the trial of the case is the same as in any other criminal case.

69. The right to a fair trial is assured by provisions of the Constitution, by the various international and European conventions the Republic of Cyprus has ratified and by domestic legislation.

70. The following articles of the Constitution apply:

(a) Article 28.1 provides that "All persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby".

(b) Article 12 provides:

> "1. No person shall be held guilty of any offence on account of any act or omission which did not constitute an offence under the law at the time when it was committed; and no person shall have a heavier punishment imposed on him for an offence other than that expressly provided for it by law at the time when it was committed.
>
> 2. A person who has been acquitted or convicted of an offence shall not be tried again for the same offence. No person shall be punished twice for the same act or omission except where death ensues from such act or omission.
>
> 3. No law shall provide for a punishment which is disproportionate to the gravity of the offence.

4. Every person charged with an offence shall be presumed innocent until proved guilty according to law.

5. Every person charged with an offence has the following minimum rights:

(a) To be informed promptly and in a language which he understands and in detail of the nature and grounds of the charge preferred against him.

(b) To have adequate time and facilities for the preparation of his defence;

(c) To defend himself in person or through a lawyer of his own choosing or, if he has no sufficient means to pay for legal assistance, to be given free legal assistance when the interests of justice so require;

(d) To examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

(e) To have the free assistance of an interpreter if he cannot understand or speak the language used in court.

6. A punishment of general confiscation or property is prohibited."

(c) Article 30.2 provides:

"In the determination of his civil rights and obligations or of any criminal charge against him, every person is entitled to a fair and public hearing within a reasonable time by an independent, impartial and competent court established by law. Judgment shall be reasoned and pronounced in public session, but the press and the public may be excluded from all or any part of the trial upon a decision of the court where it is in the interest of the security of the Republic or the constitutional order or the public order or the public safety or the public morals or where the interests of juveniles or the protection of the private life of the parties so require or, in special circumstances where, in the opinion of the court, publicity would prejudice the interests of justice."

(d) Article 30.3 provides:

"Every person has the right:

(a) To be informed of the reasons why he is required to appear before the court;

(b) To present his case before the court and to have sufficient time necessary for its preparation;

(c) To adduce or cause to be adduced his evidence and to examine witnesses according to law;

(d) To have a lawyer of his own choice and to have free legal assistance where the interests of justice so require and as provided by law;

(e) To have free assistance of an interpreter if he cannot understand or speak the language used in court."

71. Article 14 of the International Convention on Civil and Political Rights, which Cyprus ratified by law No. 14 of 1969, corresponds to the articles of the Cyprus Constitution mentioned above.

72. The domestic legislation safeguarding fair trial is:

(a) The Criminal Procedure Law (cap. 155);

(b) The Courts of Justice Law, 1960 (Law No. 14 of 1960);

(c) The Evidence Law (cap. 9) (containing local provisions and reaffirming the applicability of the Common Law);

(d) The Juvenile Offenders Law (cap. 157).

73. It must be mentioned that the right to a fair trial is emphasized in judgements of the Supreme Court, which must be respected by all courts.

Article 8. Making torture extraditable

74. Under the Extradition of Fugitives Law, 1970 (Law No. 97 of 1970) the offence of torture is not specifically listed as extraditable. In view of the fact that torture may at the same time constitute one of the listed extraditable offences, any amendment of the law so as to make the offence of torture a specific extraditable offence is not considered necessary (see para. 54 above).

75. Regarding the difficulties pertaining to the extradition of a person taking refuge in the part of Cyprus occupied by Turkey, see paragraph 65 above.

Article 9. Mutual assistance

76. The Republic of Cyprus is in general cooperative with other countries on matters of crime detection and in criminal proceedings and no special steps need be taken for the offence of torture, which is considered a serious offence. Cyprus has signed a number of bilateral treaties on legal proceedings and legal assistance in civil and criminal matters and with Greece on legal cooperation in matters of civil, family, commercial and criminal law.

Article 10. Education and information

77. Needless to say, the authorities and the people of Cyprus are very sensitive and conscious on matters regarding the respect of human rights owing to the flagrant violation of such rights in consequence of the Turkish Invasion in 1974. In the civics lesson for secondary schools there is extensive reference to and a verbatim reproduction of the Universal Declaration of Human Rights, as well as the relevant articles of the Constitution.

78. In the programme of the Police Academy there is a special subject regarding ill-treatment and interrogation of suspects. The following subjects are included in the curriculum, and are indicative of the comprehensiveness of the education and training the police officers receive:

(a) The role of police officers in the promotion and protection of human rights;

(b) Historical evolution of human rights;

(c) Cyprus Constitution and human rights;

(d) Code of behaviour of police officers with the public (in general);

(e) Slavery and slaves;

(f) Torture (in general),

(g) Search, arrest and detention of people;

(h) Nationality;

(i) The right of marriage;

(j) Interrogation of suspects;

(k) Entry and search of premises and seizure of goods;

(l) Taking body samples;

(m) Freedom of speech;

(n) Use of force.

79. The education and training of police officers is supplemented by lectures which are periodically given by judges and representatives of the Attorney-General.

80. Members of the staff of prisons and hospitals are also warned against ill-treating prisoners or patients in any way.

Article 11. Interrogation rules

81. The interrogation of suspects or witnesses must be carried out very carefully and according to the rules because any statement vitiated in any way by the use of force or any form of oppression is rejected by the courts if tendered as evidence. In Cyprus any investigator must apply certain rules which under English law are known as the Judges Rules and set very high standards of interrogation procedure. Those Rules were made part of the Law of Cyprus (Criminal Procedure Law, cap. 155, sect. 8). The manner of interrogation is one of the subjects included in the programme of the Police Academy (see preceding paragraph).

Articles 12 and 13. Investigation of complaints

82. The investigation of complaints and the making of a complaint are closely connected and will be dealt with together below.

83. A complaint by a person alleging to have been tortured by a public official or a person acting in an official capacity is usually made to the police. In such a case, if the official is not a police officer himself, the police would be considered as an impartial investigator and the proper authority for dealing with reports and the investigation of criminal offences.

84. For the reporting of cases of torture alleged to have been committed by members of the police and their investigation there is provision in the Police (Discipline) Regulations of 1989 for the setting up of complaints committees. Such committees are set up by an order of the appropriate Minister (the Minister under whose authority the Police come).

85. The complaints committees are composed of:

(a) One law officer nominated by the Attorney-General;

(b) Two officers holding a post in the public service;

(c) One senior police officer who must not come from the same unit, department or division as the officer against whom the complaint is made.

The members under (b) and (c) above are nominated by the appropriate Minister, who also nominates the chairman of the committee.

86. The committee investigates the complaint and submits its report to the appropriate Minister. The committee when investigating a complaint has the same powers as a commission of inquiry operating under the Commissions of Inquiry Law (cap. 44). Such powers include:

(i) The taking on oath of all such evidence written or oral as it considered desirable;

(ii) The summoning of any person to attend a meeting of the committee to give evidence or produce any documents;

(iii) The issuing of a warrant compelling the attendance of any witness;

(iv) The fining of any person refusing to give evidence or produce a document;

(v) The admission or exclusion of the public or the press.

87. The Minister, after the submission of the report of the committee, may refer the matter to the Attorney-General if a criminal offence appears to have been committed, or refer the matter for disciplinary action if a disciplinary offence appears to have been committed. If no criminal or disciplinary offence appears to have been committed the report is returned through the Chief of Police to the complaints committee and the complainant is informed accordingly.

88. Under the above regulations the complaint is made to the Chief of Police.

89. During the years 1990-1991 16 cases were examined by such committees. In eight of the cases no criminal or disciplinary offences were found to have been committed. In three of the cases there were doubts as to the commission of any offence. In two cases it was established that the officers involved exceeded their right to exercise only necessary force. A recommendation was made to take disciplinary action against the officers involved in the one case and criminal proceedings were taken against the officers in the other. The case is still pending. There was another case where a criminal offence appeared to have been committed, but the case was discontinued. In one of the cases where no offence of whatever nature appeared to have been committed, the complainant himself filed a criminal charge against the officers involved.

90. The impartiality of the complaints committees was questioned in a recent case (summer of 1992) on the ground that the members of the committee, with the exception of the member nominated by the Attorney-General, were all appointed by the Minister responsible for the Police. In view of this development the Council of Ministers invoked a provision in the Criminal Procedure Law (cap. 155, sect. 4 (2)) and appointed an ex-judicial officer as an independent investigator of the complaint.

91. Section 4 of the Criminal Procedure Law under which the special investigator was appointed, reads as follows:

"4.(1). Any police officer may investigate into the commission of any offence.

(2). The Council of Ministers may authorize any person, by name or by his office, who appears to it to be competent for the purpose, to investigate into the commission of any offence".

92. An investigator appointed by the Council of Ministers under the Criminal Procedure Law carries out the work of a police investigator and at the end of his investigations submits to the Attorney-General the evidence collected for further action. The investigator appointed in the particular case referred to above submitted his report and the evidence to the Attorney-General, on the basis of which two senior police officers were charged with torture under a

provision of the Convention against Torture and Other Cruel or Inhuman Treatment or Punishment (Ratification) Law 1990 (Law No. 235 of 1990). The trial is still in progress.

93. Since 1991 any person having a complaint concerning the violation of his rights, including ill-treatment by a member of the police or other officer in the public service, may submit his complaint to the Commissioner for Administration (Ombudsman). The relevant Law was enacted in 1991 (Law No. 3 of 1991).

94. Under section 5 (1) (a) of the Law, the Commissioner for Administration has power to investigate any complaint against any public officer (including a police officer) that any action of such officer violates, inter alia, personal rights. If during the investigation of such a complaint it appears to the Commissioner that a criminal offence has been committed, he refers the matter to the Attorney-General for the taking of the necessary action.

95. A citizen has the right to institute himself criminal proceedings against the person who allegedly tortured him, if for any reason no criminal proceedings are taken against that person.

96. A complaint of torture or ill-treatment may further be made to a court when the suspect is brought before it for the issue of any order for his detention. Every person arrested for any crime must be brought before a court within 24 hours from his arrest, for the purpose of securing an order for his remand in custody. The suspect has then the opportunity, if he was ill-treated in any way during his detention, to bring the matter to the knowledge of the court (see para. 9 above). The court may give directions for the investigation of the complaint and further direct that the complainant be examined by a doctor.

97. An investigation of a complaint of ill-treatment may also be directed by a court during the trial of any person charged with the commission of a criminal offence, if such person objects to the production of a confession he made on the ground that it was obtained by the use of torture, ill-treatment or under oppressive circumstances.

98. Despite the machinery available for the making of complaints and their investigation by an impartial investigator, the procedure under section 4 (2) of the Criminal Procedure Law (cap. 155) may be reviewed in the near future so as to make it a more flexible alternative to the other mechanisms.

Article 14. Remedies of victims

99. Apart from the right of the victim to institute criminal proceedings against the torturer, he may also sue him for damages. In an action for damages, the court awards general and special damages. The special damages are liquidated damages covering actual expenses, whereas the general damages cover a wide spectrum of damages, including pain and suffering, present and future, loss of earnings, present or prospective, medical expenses and any other expenses necessary for rehabilitation. In a proper case the court may award exemplary damages and such damages may be appropriate in a bad case of torture.

100. Under the Civil Wrongs Law (cap. 148), as recently amended by Law No. 156 of 1985, damages are awarded for bereavement. Such action is brought by the husband or wife of the deceased or by the parents if the deceased was below the age of 18. The damages are fixed. Under the same Law, damages are awarded to the dependants of a person who dies as a result of a civil wrong. The class of dependants was widened by the aforesaid amendment to the Law and includes husband or wife, parents, children or descendants, brother or sister, uncles and aunts.

101. Under the Constitution, the Government is sued like any other person and is liable for all acts committed by its officers in the execution of their duties. It is questionable whether the liability of the Government is based on the liability a master has for the acts of his servant, in which case the master may not be liable for the criminal acts of the servant unless expressly authorized by him, or is based on the principle of direct liability in the sense that any act of a civil servant in the execution of his duties is deemed to be the act of the Government. However, whatever the answer to the above question, the fact is that the Government invariably compensates the persons who suffer damages in consequence of acts of its officers, with or without admission of liability.

102. On 9 January 1991 the Republic of Cyprus signed the European Convention for the Compensation of Victims of Violent Crimes, of 1983, and is currently preparing a bill for giving effect to the provisions of the Convention. By the said bill a victim of a crime involving violence will be entitled to compensation from a special fund which will be under the control of the Director of Social Insurance. This will be beneficial for victims who cannot obtain redress from the Government or from the culprit.

Article 15. Statements obtained by torture

103. Statements obtained by torture are not admissible in the courts of law. Moreover, it must be stressed that under the evidentiary system of Cyprus, hearsay evidence is not admissible and if the statement is tendered in lieu of calling the maker of the statement to testify, it shall not be admissible even if obtained freely and without using any kind of torture or oppression. It must also be mentioned that the judge may exclude even admissible evidence if, in his opinion, its prejudicial effect outweighs its probative value.

Article 16. Other acts of degrading treatment

104. The Republic is currently considering the modernization of its Criminal Code and will take the provisions of article 16 into consideration in doing so.

105. The punishments which a court can impose are governed by express legal provisions which cannot be contrary to the constraints contained in the Constitution. In the Criminal Code there was provision for whipping and caning. Such punishments were contrary to the Constitution and were repealed. Also, penal servitude is prohibited by the Constitution and any form of punishment involving labour must be imposed with the consent of the offender. Even conditions involving labour cannot be included in a probation order unless the offender consents to such a condition.

Conclusion

106. The Republic of Cyprus is very conscious and sensitive regarding the respect of human rights in general, and the efforts for the implementation of all conventions safeguarding such rights are constant, consistent and intensive. In this respect it may be usefully mentioned that the Council of Ministers recently decided to entrust the Law Commissioner with the duty to prepare, in cooperation with the Ministry of Foreign Affairs, the Ministry of Justice and Public Order, the Attorney-General, the Commissioner for Administration and other Ministries or departments involved, the reports which are periodically submitted to the Commissions set up under the provisions of the various Conventions. In addition, the Law Commissioner is authorized to keep under constant review the local legislation, with a view to making suggestions for its harmonization with the provisions and principles of the Conventions.